

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the Authority set forth in D.C. Official Code § 47-2853.10 (a) (12) and Mayor's Order 2000-70, dated May 2, 2000, hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, a new 17 DCMR Chapter 23 (Real Estate Appraisers), and an amendment to 17 DCMR Chapter 33. This rulemaking is necessary to update the Real Estate Appraiser regulations to reflect changes in the law and the profession. In addition, pursuant to a September 2003 vote of the Board of Real Estate Appraisers, the rulemaking reflects two new license categories: appraiser trainee and certified residential real property appraiser.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on March 10, 2006. Comments were received from the public. In response to these comments the Director and the Board have amended the proposed rules and are publishing them for an additional thirty-day (30) comment period. The affected sections are §§ 2304.13, 2304.15, 2306.6, 2311.7, 2318.1, 2320.1(b), and 2325.3. In addition, the Appraiser Trainee classification has been changed from a registration to a license.

Title 17 DCMR Chapter 33 is amended as follows:

The title of Chapter 33, Title 17 DCMR is amended to read as follows:

“GENERAL RULES: FUNERAL DIRECTORS, VETERINARIANS, INTERIOR DESIGNERS AND REAL ESTATE APPRAISERS”; and

Title 17 DCMR Chapter 33, section 3300.1(d) is amended by adding a new paragraph to read as follows:

(d) The Board of Real Estate Appraisers, established by D.C. Official Code § 47-2853.06(g)

Title 17 DCMR Chapter 23 is amended to read as follows:

CHAPTER 23 -- REAL ESTATE APPRAISERS

Secs.

- 2300 General Provisions
- 2301 General Requirements for Licensure
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2300 GENERAL PROVISIONS

- 2300.1 This chapter shall apply to holders of and applicants for a license to practice real estate appraising. The purpose of this chapter is to establish and enforce education, experience, and practice standards that will allow individuals licensed in the District of Columbia to perform appraisals for federally related and non-federally related real estate transactions.
- 2300.2 17 DCMR Chapter 33 (General Rules) shall supplement this chapter and establish the procedural requirements associated with initiating and holding disciplinary proceedings against licensees. In the event that a provision within 17 DCMR Chapter 33 conflicts with this chapter or the Act, the applicable provision within this chapter or the Act shall control.
- 2300.3 The Board may meet at least once a month in public session, but shall not meet less than four times per year. The Board shall publish notice of the time and place of each meeting in the D.C. Register at least one week in advance of the meeting. The public has the right to appear before the Board and testify on subjects within the Board's jurisdiction.
- 2300.4 The Board shall elect a chairperson from among the members of the Board. The Chairperson shall have the authority to sign all official documents issued on behalf of the Board, after approval by the Board.
- 2300.5 A majority of the legislated size of the Board shall be present at a meeting in order to constitute the quorum necessary to conduct official business.

- 2300.6 A majority vote of all Board members present and voting is necessary and sufficient for any action taken by the Board.
- 2300.7 Board members may convene in small committees of not less than three Board members to carry out specific functions of the Board, such as holding disciplinary hearings, if the full Board ratifies the actions of the small committees.
- 2300.8 Copies of all records and papers pertaining to licensure, inspections, investigations, and other matters under the jurisdiction of the Board shall be maintained by the Department on behalf of the Board. Copies of all records and papers duly certified and authenticated by the seal of the Board shall be received in evidence in all courts equally, and with like effect as the original, subject to the rules of evidence.
- 2300.9 It shall be Board policy to retain jurisdiction over the hearing process for each disciplinary matter that it initiates unless the Board, by majority vote, agrees to send a disciplinary matter to the Office of Administrative Hearings (OAH) for adjudication pursuant to D.C. Official Code § 2-1831.01 et seq. (2003 Supp.). Any disciplinary proceeding initiated by the Board, and any hearing or other conference held by the Board pursuant thereto, shall comply with the requirements of this chapter and the Act.
- 2300.10 Any licensee adversely impacted by a final OAH decision in a case initiated by the Board from the Board's issuance of 'Charges and Specifications' against a licensee, except those decisions related to procedural matters not under the Board's jurisdiction, may appeal the OAH decision to the Board. Appeals from any Board decision, whether rendered by the Board in its capacity as an initial hearing body or as an appellate body, shall be made to the D.C. Court of Appeals.

2301 GENERAL REQUIREMENTS FOR LICENSURE

- 2301.1 An applicant for a license shall do the following:
- (a) Submit a completed application on a form supplied by the Board;
 - (b) Pay the required fees;
 - (c) Submit to the Board all required supporting credentials, documents, and materials requested by the Board including the following:
 - (i) Transcripts;
 - (ii) References;
 - (iii) Test scores;

- (iv) Affidavits of successful completion of prelicensing or precertification coursework; and
 - (v) A completed and notarized affidavit of work experience.
 - (d) Submit with the application two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2");
 - (e) If applicable, the applicant shall submit proof of having passed the examination required by the Board for the level of licensure desired by the applicant.
- 2301.2 Applicants shall be at least eighteen (18) years of age.
- 2301.3 Applicants may not have been convicted of an offense that bears directly on the fitness of the applicant to be licensed.
- 2301.4 Application fees and examination fees are not refundable.
- 2301.5 An applicant may not have been convicted of a crime in any jurisdiction or disciplined by any regulatory body in any jurisdiction for any activity that either would be grounds for the Board to discipline the applicant or would impair the applicant's ability to transact the business of a licensed or certified real property appraiser, or appraiser trainee.
- 2301.6 An applicant may not have been convicted, in any jurisdiction, of an offense bearing directly upon the applicant's fitness to be licensed under this chapter or the Act. Any plea of nolo contendere shall be considered a conviction for the purposes of these regulations.

2302 PRELICENSURE EDUCATION REQUIREMENTS

- 2302.1 Prior to applying for licensure applicants for the Appraiser Trainee classification shall fulfill the requirements set forth in § 2325 of this chapter.
- 2302.2 Applicants for the Licensed Residential Real Property Appraiser classification shall complete one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal, including those subjects listed in subsection 2302.10.
- 2302.3 Applicants for the Certified Residential Real Property Appraiser classification shall complete two hundred (200) classroom hours in subjects related to real estate appraisal, including those courses listed in § 2302.10. The two hundred (200) classroom hours may include the one hundred fifty (150) classroom hour requirement for the Licensed Real Property Appraiser classification. Applicants shall also have at least a two-year associate's degree or have completed 21 hours of college course work. The 21 hours of college course work shall have been earned from an accredited college, junior college, community college, or university in the following subjects:

- (a) English Composition;
- (b) Principles of Economics (Micro or Macro);
- (c) Finance;
- (d) Algebra, Geometry, or higher mathematics;
- (e) Statistics;
- (f) Introduction to computers – Word processing/spreadsheets; and
- (g) Business or Real Estate Law.

2302.4 Applicants for the Certified General Real Property Appraiser classification shall complete three hundred (300) classroom hours of courses in subjects related to real estate appraisal, including those courses listed in § 2302.10. The three hundred (300) hours may include the one hundred fifty (150) classroom hours required for the Licensed Residential Appraiser classification or the two hundred (200) classroom hours required for the Certified Residential Real Property Appraiser Classification. Applicants shall also possess at least a bachelor's degree or have completed 30 hours of college course work earned from an accredited college, junior college, community college, or university in the following subjects:

- (a) English Composition;
- (b) Micro Economics;
- (c) Macro Economics;
- (d) Finance;
- (e) Algebra, Geometry, or higher mathematics;
- (f) Statistics;
- (g) Introduction to Computers-Word processing/spreadsheets;
- (h) Business or Real Estate Law; and
- (i) Two elective courses in accounting, geography, ag-economics, business management, or real estate.

2302.5 The Board shall not grant credit toward the prelicensure classroom hour requirement unless the length of a class is at least fifteen (15) hours and the individual passes an examination pertinent to that class.

- 2302.6 Prelicensure course coverage on the Uniform Standards of Professional Appraisal Practice (USPAP) for all license classifications shall include the greater of fifteen (15) hours or the minimum hours required by the Appraisal Qualifications Board (AQB).
- 2302.7 Prelicensure education credit for the USPAP course shall only be awarded to licensees completing a USPAP course taught by an AQB certified instructor.
- 2302.8 The applicant shall list all qualifying courses, seminars, workshops, or conferences on the official form provided by the Board. The applicant shall sign the form and have the form notarized by a notary public. The applicant shall attach proof of completion of the required courses to the application, which shall consist of course certificates signed by the course providers or an official transcript in an envelope sealed by the school.
- 2302.9 An applicant shall not use courses that he/she has taught to satisfy the prelicensure/precertification educational requirements.
- 2302.10 The required prelicensure core curriculum for each license classification shall meet or exceed the requirements established by the AQB. Course content shall substantially comply with the AQB's guidelines for curriculum content as indicated in the AQB required core curriculum, AQB Guide Note 1 (GN-1). The prelicensure core curriculum for each license classification shall be as follows:

(a) Appraisal Trainee:

- (1) Basic Appraisal Principles - 30 hours;
- (2) Basic Appraisal Procedures - 30 Hours;
- (3) The 15-Hour national USPAP course or its equivalent;

Total – 75 Hours

(b) Licensed Residential Real Property Appraiser classification shall include coverage of the following topics:

- (1) Basic Appraisal Principles - 30 hours;
- (2) Basic Appraisal Procedures - 30 Hours;
- (3) The 15-Hour national USPAP course or its equivalent – 15 Hours;
- (4) Residential Market Analysis and highest and best use - 15 Hours;
- (5) Residential Appraiser Site Valuation and cost approach – 15 Hours;

(6) Residential sales comparison and income approaches – 30 Hours;

(7) Residential report writing and case studies – 15 Hours;

Total – 150 Hours

(c) Certified Residential Real Property Appraiser:

(1) Basic Appraisal Principles - 30 hours;

(2) Basic Appraisal Procedures - 30 Hours;

(3) The 15-Hour national USPAP course or its equivalent – 15 Hours;

(4) Residential Market Analysis and highest and best use - 15 Hours;

(5) Residential Appraiser Site Valuation and cost approach – 15 Hours;

(6) Residential sales comparison and income approaches – 30 Hours;

(7) Residential report writing and case studies – 15 Hours;

(8) Statistics, Modeling, and Finance – 15 Hours;

(9) Advanced Residential Applications and Case Studies – 15 Hours;

(10) Appraisal Subject Matter Electives – 20 Hours

(may include hours over minimum shown above in other modules);

Total – 200 Hours

(d) Certified General Real Property Appraiser:

(1) Basic Appraisal Principles - 30 hours;

(2) Basic Appraisal Procedures - 30 Hours;

(3) The 15-Hour national USPAP course or its equivalent – 15 Hours;

(4) General Appraiser Market Analysis and highest and best use - 30 Hours;

(5) Statistics, Modeling, and Finance – 15 Hours;

(6) General Appraiser sales comparison approach – 30 Hours;

(7) General Appraiser Site Valuation and cost approach – 30 Hours;

- (8) General Appraiser Income approach – 60 Hours;
- (9) General Appraiser report writing and case studies – 30 Hours;
- (10) Appraisal Subject Matter Electives – 30 Hours
(may include hours over minimum shown above in other modules);

Total – 300 Hours

2302.11 The following factors shall be used to convert university, college, junior college, and community college course credits into classroom hours:

- (a) Semester credits x 15 = classroom hours;
- (b) Quarter credits x 10 = classroom hours.

2302.12 Curriculum content for each course listed in § 2302.10 shall comply with the applicable portions of the Required Core Curriculum Content Guide Note published by the Appraisal Foundation and the AQB as part of the Real Property Appraiser Qualification Criteria. The Board may add additional requirements to the curriculum of any license classification if the Board's additions substantially comply with AQB criteria. Additions to the curriculum content shall be effective only after the Board has published a Notice of Final Rulemaking.

2302.13 The education and experience requirements for all classes of licensure shall meet or exceed the standards established by the AQB.

2302.14 If the Appraisal Qualifications Board amends the education or experience requirements for any license classification, and the amendments increase the education or experience requirements beyond the requirements established by the Board in this chapter, then the corresponding requirements established by the Board shall be deemed amended to reflect the AQB's requirements. The Board shall amend this chapter as soon as practicable to reflect any changes in education and experience requirements established by the AQB.

2302.15 Amendments to the prelicensing education and experience requirements shall not affect the status of licensees possessing current active licenses unless otherwise required by the AQB.

2303 ACCREDITATION AND CERTIFICATION OF PRELICENSE EDUCATION PROGRAMS

2303.1 Appraisal organizations shall obtain advance approval from the Board for any changes to be made in Board recognized equivalent courses with regard to program structuring, course content, course completion standards, textbooks or course materials, or instructor qualification requirements.

- 2303.2 An organization that has obtained Board recognition of its courses may advertise that such courses are "recognized" for equivalent prelicensure education credit toward the requirements for initial District of Columbia real estate appraiser licensure or certification.
- 2303.3 All courses offered by bona fide professional appraisal organizations deemed acceptable by the Board shall be acceptable for credit.
- 2303.4 Appraisal and appraisal related courses taught by institutions of higher learning recognized by an accrediting body approved by the United States Secretary of the Department of Education shall be acceptable for prelicensure or precertification credit if the course has a final written examination.
- 2303.5 All courses endorsed by the Appraiser Qualifications Board of the Appraisal Foundation shall be acceptable for credit.
- 2303.6 All courses submitted for credit shall indicate a passing grade or indicate successful completion of the course and the examination.
- 2303.7 The Board may request information from the applicant or the course provider, such as course descriptions, syllabi, or textbook references, in order to evaluate course content.
- 2303.8 Correspondence courses may be acceptable for prelicensure or precertification credit if the course meets the following conditions:
- (a) The course is presented by an accredited college or university that offers correspondence programs in other disciplines;
 - (b) An individual successfully completes a written examination administered by an official approved by the college or university; and
 - (c) The subject matter is appraisal related, and the length of the course is a minimum of fifteen (15) classroom hours for a prelicensure or precertification course.
- 2303.9 The Board may issue a list of recognized prelicensure or precertification education programs.

2304 PRELICENSURE EXPERIENCE REQUIREMENTS

- 2304.1 There is no experience requirement for the Appraisal Trainee classification.
- 2304.2 Applicants for the Licensed Real Property Appraiser shall have two thousand (2000) hours of appraisal experience obtained in no fewer than twelve (12) months.

- 2304.3 Applicants for the Certified Residential Real Property Appraiser classification shall have two thousand five hundred hours (2500) of appraisal experience obtained during no fewer than twenty-four (24) months of appraisal work.
- 2304.4 Applicants for the Certified General Real Property Appraiser classification shall have three thousand (3000) hours of appraisal experience obtained during no fewer than thirty (30) months of appraisal work.
- 2304.5 The Board may treat an applicant's hours of appraisal experience as cumulative when applied by the applicant toward achieving the necessary hours of appraisal experience for each classification.
- 2304.6 For the Certified General Real Property Appraiser classification, fifty percent (50%) or one thousand five hundred (1,500) hours of the required three thousand (3,000) hours experience shall be in appraising non-residential real property.
- 2304.7 Experience shall be supported by adequate written appraisal reports or file memoranda that shall be made available to the Board upon request.
- 2304.8 The property address for each appraisal assignment shall be identified in the experience log.
- 2304.9 An hour of experience means verifiable time spent actively engaging in tasks that are in accordance with acceptable appraisal practice. Qualifying tasks may include activities such as data gathering, property inspection, analysis, report writing, or any other activity approved by the Appraisal Qualifications Board. Minimum standards for reports are those standards that are prescribed in Standard 2 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.
- 2304.10 Except as provided in this section, acceptable appraisal practice for experience credit includes appraisal, review appraisals, real estate appraisal consulting, and mass appraisal activities that comply with USPAP and conforms to USPAP Standards 1, 2, 3, 4, 5, or 6, where the appraiser demonstrates proficiency in appraisal principles, methodology, procedures, and reporting conclusions.
- 2304.11 Appraisal experience shall be verifiable and shall be reported to the Board on a form provided by the Board. A completed form shall include the following information;
- (a) Type of property;
 - (b) Date of value;
 - (c) Address of appraised property;
 - (d) Description of work performed by the trainee/applicant and the scope of the review and supervision by the supervising appraiser;

- (e) Number of actual work hours by the trainee/applicant on the assignment;
 - (f) The signature and state certification number of the supervising appraiser if applicable.
- 2304.12 The following experience credit shall be given for work performed in accordance with the Uniform Standards of Professional Appraisal Practice:
- (a) 75 % credit for review appraisals performed under Standard 3 of the Uniform Standards of Professional Appraisal Practice;
 - (b) 100% credit for a whole real estate or real property appraisal if the appraiser did 75% of the appraisal;
 - (c) 10% credit under Standard 2.5 of the Uniform Standards of Professional Appraisal Practice for desk reviews where the review appraiser signs the appraisal;
 - (d) 100% credit for residential form appraisals and commercial form appraisals; and
 - (e) 100% credit for narrative appraisals.
- 2304.13 Separate appraisal logs shall be maintained for each supervising appraiser if applicable.
- 2304.14 There is no maximum time limit during which experience may be obtained.
- 2304.15 Effective January 1, 2008, work experience must be USPAP compliant and have been earned on or after January 30, 1989.

2305 LICENSURE BY RECIPROCITY OR ENDORSEMENT

- 2305.1 An applicant for a license or certificate by reciprocity shall furnish proof satisfactory to the Board that the applicant is licensed or certified and in good standing under the laws of another State or U.S. territory with requirements that are substantially equivalent to the requirements of this chapter and the Act, and the State or U.S. territory admits real estate appraisers licensed or certified in the District in a similar manner.
- 2305.2 An applicant for licensure by endorsement shall furnish proof of the following:
- (a) That the applicant is currently licensed or certified and is in good standing under the laws of another state;
 - (b) That the original state of licensure or certification has examination requirements which, in the opinion of the Board, were substantially equivalent at the time of

licensure or certification to the requirements of the Act, and the examination has been approved by the Appraisal Foundation;

- (c) That the prelicensure or precertification requirements of the original state of licensure were substantially equivalent, at the time of licensure or certification, to the requirements of the Act.
- (d) That the applicant meets the minimum requirements for licensure in the District of Columbia set forth in § 2301 of this chapter.

2305.3 The Board may deny an application if the applicant has been convicted in any jurisdiction of any crime involving any offense that bears on the fitness of the individual to be licensed or certified. A plea of nolo contendere shall be considered a conviction for purposes of this subsection.

2305.4 An applicant for a license or certificate by reciprocity or endorsement shall not have had an application denied by the Board for reasons other than failure to pass the National Uniform Appraiser Examination within 1 year prior to the date on which the application is filed.

2306 TEMPORARY PRACTICE

2306.1 Pursuant to Section 1121 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USCS § 1811, and the Act, the Board shall issue an individual a temporary license if the individual completes an application provided by the Board and provides documentation that he or she meets the following requirements:

- (a) The individual is licensed or certified and in good standing under the laws of another state;
- (b) The property to be appraised by the individual is part of a federally related transaction, is located in the District, and the assignment and property are specifically identified in the application;
- (c) The appraisal assignment is of a temporary nature and is limited to one specific assignment or six months, whichever is shorter;
- (d) Upon completion of the assignment, the temporary license is surrendered to the Board; and
- (e) The individual pays the applicable fee identified in 17 DCMR 3500.1.

2306.2 The holder of a temporary permit to practice in the District is subject to the applicable provisions of this chapter and the Act.

- 2306.3 The Director or the Board may revoke a temporary license without a hearing for any reason that the Board determines to be in the interest of the health or welfare of the citizens of the District, upon a minimum of five (5) days notice given in the manner prescribed by § 3318 of Chapter 33 of this Title.
- 2306.4 An individual shall not hold more than one temporary license at a time.
- 2306.5 A specific appraisal assignment may include multiple properties.
- 2306.6 A temporary license holder may extend the temporary license for one additional license period by filing an application for extension. If a temporary license holder requires an additional extension after the first the temporary license holder must apply for a new temporary license and the Board may grant or deny the second application at its discretion.

2307 EXAMINATION

- 2307.1 Within twenty-four (24) months of having successfully passed the National Uniform Appraiser Examination or other precicensure qualification examination approved by the Appraisal Qualifications Board and the Board, the applicant shall file an application for licensure.
- 2307.2 A candidate shall complete the educational requirements prior to sitting for the examination.
- 2307.3 A candidate who fails an examination may have the examination reviewed in accordance with the procedures, if any, of the testing service.
- 2307.4 Failure to comply with the requirements of this subsection shall require reexamination.

2309 TERM OF LICENSE

- 2309.1 All licenses issued pursuant to this chapter and the Act shall expire on February 28 of each even numbered year, constituting a license cycle.
- 2309.2 The Board may change the license cycle for administrative convenience.
- 2309.3 If the Board changes the license cycle, the term of a license that is in effect on the date of the Board's determination to change the cycle may, at the Board's discretion, be extended up to three (3) years in order to permit an orderly transition. Any extension of the license term implemented under this section shall only be made by Board resolution.

2310 LICENSE RENEWAL

- 2310.1 At least sixty (60) days prior to the expiration of a license the Board shall send a renewal application by certified or registered first class mail to the holder of a license at the licensee's last known address.
- 2310.2 A holder of a license shall meet all of the requirements for license renewal prior to the issuance of the renewal.
- 2310.3 A holder of a license shall provide the Board a street address for the licensee's residence, not a post office box, and shall notify the Board in writing of any change of home or business address within thirty (30) days of the change.
- 2310.4 The failure of a holder of a license to receive the notice required by § 2310.1 of this section does not relieve the holder of the responsibility of renewing the license.
- 2310.5 A holder of a license who fails to renew before the expiration date may renew the license within sixty (60) days after expiration upon paying the required late fee. Upon renewal, the holder shall be deemed to have possessed a valid license during the period between the expiration of the license and its renewal.
- 2310.6 If a licensee fails to renew his or her license within sixty (60) days after its expiration, the license shall be deemed to have lapsed on the date of expiration and the holder shall be required to apply for reinstatement of the expired license pursuant to D.C. Official Code § 47-2853.15 (2001) and § 3308 of chapter 33 of this title and pay the required reinstatement fee. A licensee may not apply for reinstatement if the license has been expired for five (5) years or more.
- 2310.7 The Board shall deny a renewal application if the applicant has not completed the continuing education requirements prior to the expiration date of the license.
- 2310.8 Denial of an application for renewal for failure to complete the continuing education requirements shall require the applicant to complete the continuing education requirements prior to submitting an application for reinstatement pursuant to § 2622 of this chapter.

2311 CONTINUING EDUCATION REQUIREMENTS

- 2311.1 Except as provided in § 2311.2, this section shall apply to all applicants for the renewal or reinstatement of each license classification.
- 2311.2 This section shall not apply to an applicant who obtains a license during the second year of the two (2) year period proceeding the date the license expires.
- 2311.3 An applicant for renewal or reinstatement of a real estate appraiser license shall be required to satisfactorily complete twenty-eight (28) classroom hours of Board approved continuing education courses within each licensing cycle.

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- 2311.4 The Board will grant credit toward the classroom hour requirement only when the length of the educational offering is at least three (3) hours.
- 2311.5 The Board may approve the following continuing education activities, not to exceed (10) hours, if the activity relates to real estate appraising:
- (a) Serving as an instructor or speaker at a conference, seminar, or workshop; and
 - (b) Publication of an article in a professional journal, publication of a book or a chapter in a book, or publication of a review in a professional journal.
- 2311.6 A continuing education credit shall be valid only if it is a part of a program or activity approved by the Board.
- 2311.7 Prior to renewing his or her license, and as part of the twenty-eight hours of continuing education courses required by the Board and the Appraisal Qualifications Board, appraisers shall successfully complete either the seven-hour National USPAP Update Course or an equivalent course as determined by the Appraisal Qualifications Board and approved by the Board.
- 2311.8 Continuing education credit for the National USPAP Update Course shall only be awarded to licensees completing USPAP continuing education courses taught by an AQB certified instructor and at least one certified residential real property appraiser or one certified general real property appraiser.
- 2312 DOCUMENTATION OF CONTINUING EDUCATION CREDITS**
- 2312.1 Continuing education course documentation shall be filed on a form provided by the Board and shall include the following:
- (a) Sponsor;
 - (b) Title and/or description of course content;
 - (c) Dates of attendance or publication;
 - (d) Location; and
 - (e) Number of hours.

2313 APPROVED CONTINUING EDUCATION PROGRAMS

2313.1 The Board may approve continuing education programs that contribute to the growth of an applicant in professional competence in the practice of real estate appraising.

2313.2 The Board may approve educational offerings that include, but are not limited to, the following real estate related appraisal topics:

- (a) Ad Valorem Taxation;
- (b) Arbitration;
- (c) Business courses related to practice of real estate appraisal;
- (d) Construction cost estimating;
- (e) Ethics and standards of professional practice;
- (f) Land use planning, zoning and taxation;
- (g) Management, leasing, brokerage, timesharing;
- (h) Property development;
- (i) Real estate appraisal (valuations/evaluations);
- (j) Real estate law;
- (k) Real estate litigation;
- (l) Real estate financing and investment;
- (m) Real estate appraisal related computer applications;
- (n) Real estate securities and syndication;
- (o) Real property exchange; and
- (p) USPAP.

2313.3 To qualify for approval by the Board, a continuing education program shall be administered by one of the following:

- (a) Colleges or Universities;
- (b) Community or Junior Colleges;

- (c) Real Estate Appraisal or Real Estate Related Organizations;
- (d) State or Federal Agencies or Commissions;
- (e) Proprietary Schools; or
- (f) Other providers approved by the Board.

2313.4 The Board may issue a list of approved continuing education programs.

2313.5 An applicant shall have the burden of verifying whether a program is approved by the Board pursuant to this section prior to attending the program.

2314 INACTIVE STATUS

2314.1 Upon application by a licensee and payment of the required fee, the Board shall place a licensee on inactive status.

2314.2 The Board shall issue a license to an individual who is on inactive status and who desires to resume practice as a real estate appraiser if the individual meets the following requirements:

- (a) Pays the required fee;
- (b) Demonstrates compliance with continuing education requirements; and
- (c) Applies for license renewal within five years of going on inactive status.

2314.3 The Board may take disciplinary action against a licensee on inactive status.

2314.4 A licensee may remain on inactive status for a period not to exceed five (5) consecutive years.

2315 DISPLAY OF LICENSE AND LICENSE NUMBERS

2315.1 The license pocket card issued by the Director to each real estate appraiser or appraisal trainee shall be retained by the licensee as evidence of licensure and shall be carried by the licensee during the process of appraising real property in the District.

2315.2 The license number shall be prominently displayed adjacent to the signature on every appraisal.

2315.3 The license issued by the Director to each real estate appraiser and appraiser trainee shall be prominently displayed in the appraiser's place of business.

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- 2316.1 A licensee shall notify the Board in writing within thirty (30) days of any name change or change of business address or residence address.

2317 STANDARDS OF PROFESSIONAL PRACTICE

- 2317.1 A licensee shall conduct all appraisals in conformity with the current edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation, including Preamble, Ethics Provision, Competency Provision, Departure Provision, Jurisdictional Exception, Supplemental Standards, Definitions and Standards 1, 2, and 3 with all related Standard Rules, Statements on Appraisal Standards, Advisory Opinions, and indices is incorporated by reference.
- 2317.2 Upon the completion of an assignment, a licensee shall return to the owner, upon demand, any original document, or instrument that the licensee or certificate holder possesses.
- 2317.3 A licensee appraising property in which he/she, any member of his/her family, any member of his/her firm, or any entity in which he/she has a financial or ownership interest, shall disclose in writing, to any client such interest in the property and his/her status as a real estate appraiser licensed or certified in the District of Columbia.
- 2317.4 All licensees shall comply with the Competency Rule of USPAP.

2318 NATIONAL REGISTRY FEE ASSESSMENT

- 2318.1 In accordance with the requirements of Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (103 Stat. 513; 12 U.S.C. 3338), \$ 50.00 of the biennial renewal fee assessed for all licensed and certified real estate appraisers, except licensed appraisal trainees, shall be submitted by the Department of Consumer and Regulatory Affairs to the Appraisal Subcommittee.

2319 PAYMENT OF LICENSE FEES

- 2319.1 Payment of real estate appraiser license fees shall be made by personal check, cashier's check, certified check, money order, or credit card.

2320 APPRAISER RECORDKEEPING AND NOTIFICATION REQUIREMENTS

- 2320.1 A licensee shall retain records of appraisal, analysis, and review assignments, including oral testimony, in the following manner:
- (a) For a period of at least five (5) years after preparation of the report generated by the activity; or

(b) If a report was the subject of or used for litigation purposes, and testimony was given, the report shall be kept for two (2) years after final disposition of any judicial proceeding in which testimony was given.

2320.2 A licensee shall, upon demand or request by the Board, promptly produce any document, book, or record concerning any appraisal that the licensee or certificate holder performed.

2320.3 A licensee shall inform the Board in writing within thirty (30) days of pleading guilty or nolo contendere, or being convicted or found guilty of any felony or of any misdemeanor.

2320.4 A licensee shall inform the Board in writing within thirty (30) days of the suspension, revocation, or surrender of his or her appraiser license or certificate held in any other jurisdiction.

2321 APPRAISAL INSTRUCTORS

2321.1 To be approved by the Board for prelicensing credit, a course instructor shall be an individual who has been approved as an instructor by one of the bona fide professional appraisal organizations that is a member of the Appraisal Foundation, or be a professor or instructor at a college or university which has an accredited department of real estate and economics.

2321.2 An appraiser instructor of a prelicensing (residential appraisal) course shall possess one hundred five (105) classroom hours of real estate appraisal education and 2,000 hours experience as a residential real estate appraiser within the previous five years.

2321.3 An appraiser instructor of a precertification (general appraisal) course shall possess two hundred five (205) classroom hours of real estate appraisal education and 2,000 hours experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in income property appraising.

2321.4 All Uniform Standards of Appraisal Practice (USPAP) courses taught for prelicensure or continuing education purposes shall be taught by instructors certified by the Appraiser Qualifications Board.

2323 APPRAISAL EDUCATION FUND ASSESSMENT

2323.1 An applicant for a license shall pay, in addition to the applicable license fee, the sum of one hundred dollars (\$100.00) into the Fund.

2323.2 Upon renewal of a license the licensee shall pay, in addition to the applicable renewal fee, the sum of one hundred dollars (\$100.00) into the Fund.

2324 APPRAISAL EDUCATION FUND USE FOR PROGRAMS

- 2324.1 The Board may use the Fund to pay that proportion of the cost of a program that is equal to the percentage of the program that is directly related to establishing or maintaining an educational program to improve the competency of licensees or certificate holders.
- 2324.2 The Board may authorize the Fund to be used for expenditures for conferences, workshops, and educational programs for real estate appraisal officials as provided in §§ 2324.3 and 2324.4.
- 2324.3 For purposes of this subsection, a "real estate appraisal official" means an employee of the District of Columbia government whose duties involve the enforcement of real estate appraisal license laws including, but not limited to, board members, legal counsel, and other employees as designated by the Board.
- 2324.4 The Board may use the Fund to pay the entire permissible cost for a real estate appraisal official, whose duties relate in whole or in part to the enforcement of real estate appraisal license laws, to participate in a conference, workshop, or educational program that the Board determines is qualified pursuant to § 2324.5.
- 2324.5 In deciding whether a conference, workshop, or educational program is qualified, the Board shall consider the following:
- (a) The educational objective of the proposed program;
 - (b) The length of the proposed program, the schedule of instruction, location, and anticipated number of participants;
 - (c) A list of instructors and their credentials; and
 - (d) Any other information about the conference, workshop, or program as the Board may require.

2325 APPRAISER TRAINEE

- 2325.1 The Board may issue an appraiser trainee license to an applicant who has completed a prelicensure education program that meets the following requirements:
- (a) Seventy-five (75) classroom hours of instruction that shall include fifteen (15) hours relative to the Uniform Standards of Professional Appraisal Practice (USPAP):
 - (1) A classroom hour is equal to fifty (50) minutes of each sixty (60) minute segment and includes time devoted to tests which are considered to be part of the course;

- (2) Classroom hours may only be obtained where the minimum length of the educational offering is fifteen (15) hours and the individual successfully completes an examination pertinent to that educational offering;
 - (3) Credit for the classroom hours may be obtained from the following:
 - (i) Colleges or Universities;
 - (ii) Community or Junior Colleges;
 - (iii) Real Estate Appraisal or Real Estate Related Organizations;
 - (iv) State or Federal Agencies or Commissions;
 - (v) Proprietary Schools; or
 - (vi) Other providers approved by the Board or the Educational Licensure Commission.
 - (4) Qualifying education shall have been obtained within the five-year period immediately preceding application for licensure; and
 - (5) The content for courses, seminars, workshops, or conferences should include coverage of real estate appraisal related topics, such as influences on real estate value, legal considerations in appraisal, types of value, economic principles, real estate markets and analysis, valuation process, property description, highest and best use analysis, appraisal statistical concepts, sales comparison approach, site value, cost approach, income approach, valuation or partial interests, and the Uniform Standards of professional appraisal Practice (USPAP).
- 2325.2 There are no examination or experience requirements for the appraiser trainee classification.
- 2325.3 Within four (4) years of submitting his or her initial application for licensure, the appraiser trainee shall pass one of the following examinations approved by the Board; the licensed residential real property appraiser examination, certified residential real property appraiser examination, or certified general real property appraiser examination.
- 2325.4 The appraiser trainee is subject to direct supervision by a supervising Certified Residential Real Property Appraiser or a Certified General Real Property Appraiser licensed in the District and in good standing.
- 2325.5 The supervising appraiser shall be responsible for the training and supervision of the trainee by:

- (1) Accepting responsibility for appraisal reports prepared by the appraiser trainee by signing and certifying that the report complies with the Uniform Standards of Professional Appraisal Practice (USPAP);
 - (2) Reviewing the appraiser trainee reports; and
 - (3) Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines that the appraiser trainee is competent in accordance with the Competency Provision of the Uniform Standards of Professional Appraisal practice (USPAP) for the property type.
- 2325.6 The appraiser trainee may have more than one supervising appraiser, but a licensed or certified appraiser may not have more than three (3) appraisal trainees.
- 2325.7 The appraiser trainee shall maintain an appraiser log and shall include at least the following information for each appraisal record:
- (a) Type of property;
 - (b) Date of report;
 - (c) Client name and address;
 - (d) Address of appraised property;
 - (e) Description of work performed;
 - (f) Number of work hours;
 - (g) Signature and state/jurisdiction license/certification number of the supervising appraiser; and
 - (h) Separate appraisal logs shall be maintained for each supervising appraiser.
- 2325.8 There are no continuing education requirements for the appraiser trainee classification for the first two years of licensure. An appraiser trainee shall complete fourteen (14) hours of continuing education during each calendar year beyond the second year of licensure prior to applying for a license as a Real Property Appraiser, Certified Real Property Appraiser, or Certified General Real Property Appraiser.
- 2325.9 The appraiser trainee shall be entitled to obtain copies of appraisal reports that he or she prepared.
- 2325.10 The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after the final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

2326 DISCIPLINARY ACTION

- 2326.1 If the Board, subject to the applicant or licensee's right to a hearing as provided by the Act, finds that an applicant or licensee has violated any applicable provision of this chapter or the Act the Board may deny an application, revoke or suspend a license or privilege, levy a civil penalty, issue a reprimand, require a course of remediation, or refer an applicant or licensee to the Office of Corporation Counsel for criminal prosecution.
- 2326.2 The Board may, prior to a hearing but after an investigation, issue an order requiring any person alleged to be in violation of this chapter or the Act to cease and desist immediately from the alleged activity if the alleged activity has caused or may cause immediate or irreparable harm to the public. The Board shall deliver the order to the person affected pursuant to the provisions of D.C. Official Code § 47-2853.19 (2001).
- 2326.3 The Director may, after investigation but without a hearing, summarily suspend or restrict a licensee's license to practice pursuant to this chapter and the Act if the Director determines that the licensee's conduct presents an imminent danger to the health or safety of persons in the District.
- 2326.4 If the Director suspends or restricts a licensee's license or certification to practice pursuant to § 2326.3 of this chapter, the licensee is entitled to notice and a hearing pursuant to the provisions of D.C. Official Code § 47-2853.18.
- 2326.5 If the Board receives notification from any federal agency or federally-related lending institution that utilizes licensees or certificate holders in real property appraisals that the agency or institution has suspended a licensee from offering appraisal services on federally related transactions, the Board shall conduct an investigation into the circumstances and, if appropriate, commence disciplinary action against the licensee.

2327 PERSONS EXEMPT FROM LICENSURE

- 2327.1 No person in the District of Columbia shall conduct an appraisal for a federally related or non-federally related real estate or real property transaction or represent him or herself as holding a license issued by the Board unless he or she holds an active District of Columbia license.
- 2327.2 A person who is certified by the Office of Tax and Revenue (OTR) to perform ad valorem tax appraisal may identify himself or herself as a "certified assessor" if the term is not used in a manner that creates the impression that the person has been licensed, certified, or registered by the Board to perform real property appraisals for federally-related or non-federally related real estate and real property transactions.
- 2327.3 A person certified to perform ad valorem tax appraisal by OTR who is not licensed, certified, or registered by the Board shall not perform a real estate or real property appraisal for any purpose other than ad valorem tax purposes.

2327.4 Nothing in this chapter or the Act prohibits a person who holds an active real estate broker or real estate salesperson license issued by the D.C. Board of Real Estate from giving an opinion on the price of real estate or real property in the District for the purpose of a prospective listing or sale, or when making a Competitive Market Analysis (CMA), if the opinion or CMA complies with the requirements of 17 DCMR 2609.15.

2327.5 Persons who determine the value of things in the District of Columbia other than real property or real estate may use the word "appraiser" to describe their activities if they do not hold themselves out or imply that they are authorized to appraise real property or real estate.

2399 DEFINITIONS

2399.1 As used in this chapter, the following terms have the meanings ascribed:

Act - The Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D.C. Official Code § 47-2853.01 et seq. (2001)).

Ad Valorem Tax Appraisal – an appraisal used to establish the assessed value of real estate for real property tax purposes.

Applicant – a person applying for licensure.

Appraisal - the act or process of estimating the value of real estate.

Appraisal Foundation - the foundation incorporated as an Illinois Not-for-Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing, and promoting such standards.

Appraisal Qualifications Board – the Board created by the Appraisal Foundation to: establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing, and promoting such qualification criteria; disseminate such qualification criteria to states, governmental entities, and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

Appraisal Subcommittee- the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. § 3301 et seq.), as amended.

Appraiser Trainee – An individual who is licensed as an appraiser trainee under this chapter and who is training for licensure as a Residential Real Property Appraiser, Certified Residential Real Property Appraiser, or Certified General Real Property Appraiser, and who may appraise those properties that his or her supervising appraiser is permitted to appraise.

Assignment – one or more real estate appraisals and written appraisal reports that are covered by a contract to provide an appraisal for one or more specific parcels of real estate.

Board - District of Columbia Board of Real Estate Appraisers.

Candidate – a person who has applied to take the prelicensure examination but has not filed an application for licensure.

Certified General Real Property Appraiser - an individual licensed under this chapter to appraise any type of real estate and real property.

Certified Instructor – an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

Certified Residential Real Property Appraiser – an individual licensed under this chapter to appraise any residential real estate or residential real property of one to four units regardless of transaction value or complexity. Certified Residential Real Property Appraisers may also appraise nonresidential real property with a transaction value of up to \$250,000.

Classroom hour - fifty (50) minutes out of each sixty (60) minute segment.

Client - any person for whom an appraiser performs a service.

Complex one to four family residential property appraisal – an appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical as defined in the bank Holding Company Supervision manual, 1999 edition, page 10, section 2231.0.9.3. For non-federally related transaction appraisals, transaction value shall mean market value.

Department – The Department of Consumer and Regulatory Affairs or any successor agency with administrative authority over the Board.

Director - the Director of the Department of Consumer and Regulatory Affairs, or the Director's designee.

Distance Education – an educational process based on the geographical separation of provider and student (i.e., CD-ROM, on-line learning, correspondence courses, etc.).

District - the District of Columbia.

Federally Related Transaction - any real estate related financial transaction which:

1. A federal financial institutions regulatory agency engages in, contracts for or regulates; and
2. Requires the services of a licensed or certified appraiser.

Feasibility Analysis - A study of the cost-benefit relationship of an economic endeavor.

Fee Appraisal - appraisal made by an independent appraiser or firm hired by a client for a particular appraisal assignment.

Highest and Best Use - the reasonable and probable use that will support the highest present value as defined as of the effective date of the appraisal or the use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, and financially feasible.

Inactive licensee – a licensee who, pursuant to this chapter and the Act, pays the required fees and agrees not to practice as a real estate appraiser in the District of Columbia until he or she applies for reinstatement.

Licensed Residential Real Property Appraiser – a person licensed under this chapter to perform appraisals of non-complex one to four residential units having a transaction value of less than \$1,000,000, complex one to four residential units having a transaction value of less than \$250,000, or commercial real property with a transaction value of \$250,000 or less.

Mass Appraisal - the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.

Office of Administrative Hearings (OAH) - The independent agency established within the executive branch of the District of Columbia government by D.C. Official Code § 2-1831.01 *et seq.* (2003 Supp.) that is responsible for the administrative adjudication of all cases under its jurisdiction.

Person - an individual, corporation, trustee, receiver, guardian, representative, firm, partnership, society, school, or other entity.

Proprietary school – a privately owned school approved by the Board that offers appraisal or appraisal related courses.

Provider – means accredited colleges, universities, junior colleges, and community colleges; adult distributive or marketing education programs; local, state, or federal government agencies, boards or commission; proprietary schools; or real estate appraisal or real estate related organizations.

Real Estate Appraisal or Real Estate Related Organization – any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

Real Estate or Real Property – land, including the air above and ground below, and any appurtenance or improvement thereto, as well as any interest, benefit, or right to inherit in the ownership of land.

Real Estate Consulting - advice and guidance on diversified problems in the broad field of real estate involving any or all segments of the business such as merchandising, leasing, management, planning, financing, appraising, court testimony, and other similar services. Real

Estate Consulting services are often associated with evaluation services concerning matters other than value estimates relating to real property and may include activities such as the following:

Absorption Study	Ad Valorem Tax study
Annexation Study	Assemblage Study
Assessment Study	Condominium Conversion Study
Cost-benefit Study	Cross Impact Study
Depreciation/Cost Study	Distressed Property Study
Economic Base Analysis	Economic Impact Study
Economic Structure Analysis	Eminent Domain Study
Feasibility Study	Highest and Best Use Study
Impact Zone Study	Investment Analysis Study
Investment Strategy Study	Land Development Study
Land Suitability Study	Land Use Study
Location Analysis Study	Market Analysis Study
Market Strategy Study	Market Turning Point Analysis
Marketability Study	Portfolio Study
Rehabilitation Study	Remodeling Study
Rental Market Study	Right of Way Study
Site Analysis Study	Utilization Study
Urban Renewal Study	Zoning Study

Reinstatement – pursuant to D.C. Official Code § 47-2853.15 (2001), having a license restored to effectiveness after the expiration date has passed.

Renewal – continuing the effectiveness of a license for another license cycle.

Review Appraisal – a report that forms an opinion as to the adequacy and appropriateness of the appraisal report that is being reviewed.

Staff Appraisal - appraisal made by an appraiser who is a salaried employee of a regulated institution.

Substantially Equivalent – any educational course or seminar, experience, or examination taken in this or another jurisdiction that is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and the Act.

Supervising Appraiser – any individual holding a license issued by the Real Estate appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser who supervises any unlicensed person acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

Transaction Value – the monetary amount of a transaction that may require the services of a certified or licensed appraiser for completion. Transaction value is not always equal to the market value of the real property interest involved.

Uniform Standards of Professional Appraisal Practice – those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

Valuation – an estimate or opinion of the value of real property.

All persons desiring to comment on these proposed regulations should submit comments in writing to Paul Waters, Legislative Liaison, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, NE, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested.

DEPARTMENT OF HEALTH
NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendment to Chapter 73 of Title 17 DCMR (Business, Occupations & Professions) (May 1990) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed rules amending Chapter 40 will revise the requirements for the submission of photographs and will notify licensees that the photographs submitted as part of the initial licensing or renewal process will be posted on the Health Professional License Administration website for the purpose of identifying licensees.

Chapter 40 (Health Occupations: General Rules) of Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:

Section 4001 is amended to read as follows:

**4001 APPLICATION FOR A LICENSE, REGISTRATION, RENEWAL,
 OR REINSTATEMENT**

- 4001.1 An applicant for an initial license or initial registration shall do the following:
- (a) Submit a completed application on the prescribed form;
 - (b) Submit for the purposes of printing on the license and publication on the Health Professional Licensing Administration website, two (2) recent passport-type color photographs measuring two inches by two inches (2"x2") which clearly expose the area from the top of the forehead to the bottom of the chin;
 - (c) Pay the required fee(s);
 - (d) Submit all required supporting documents, with the completed application, including transcripts, character and employment references, certified or validated test scores, and, if applicable, certified proof of licensure in other jurisdictions, except as provided in § 4001 .1(e); and
 - (e) Arrange for the required transcript, certification of graduation, test results, certification or proof of licensure to be sent directly to the board from the educational institution, testing service, professional

association or government agency if the educational institution, testing service, association or agency will not provide these documents to the applicant.

Add a new section 4001.2 to read as follows:

- 4001.2 An applicant for a renewal or reinstatement of a license or registration shall do the following:
- (a) Submit a completed application on the prescribed form;
 - (b) Submit for the purposes of printing on the license and publication on the Health Professional Licensing Administration website, two (2) recent passport-type color photographs measuring two inches by two inches (2"x2") which clearly expose the area from the top of the forehead to the bottom of the chin. Such photographs shall be submitted for the renewal period commencing six (6) years from the date of the initial application or initial registration and thereafter, every six (6) years at the date of each subsequent renewal;
 - (c) Pay the required fees; and
 - (d) Submit all required supporting documents.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty days after the date of publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rule may be obtained from the Department at the same address during the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 73 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendments establish standards of conduct for persons who are registered as addiction counselors.

Chapter 73 (Addiction Counselors) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended by adding a new section 7304 to read as follows:

7304 STANDARDS OF CONDUCT

- 7304.1 A registered addiction counselor shall provide counseling services only under the general supervision of a licensed professional counselor or other licensed mental health professional.
- 7304.2 A registered addiction counselor shall not discriminate against clients or professionals based on race, religion, age, gender, disability, national ancestry, sexual orientation or economic condition.
- 7304.3 A registered addiction counselor shall be knowledgeable about any disabilities which clients have and shall make available physical, sensory, and cognitive accommodations that allow clients with disabilities to receive services.
- 7304.4 A registered addiction counselors who is aware of unethical conduct or of unprofessional modes of practice by other registered addiction counselors shall report such inappropriate behavior to the appropriate authority.
- 7304.5 A registered addiction counselor shall not offer services or use techniques outside of his or her competency.
- 7304.6 A registered addiction counselor shall seek appropriate treatment if he or she is impaired.
- 7304.7 A registered addiction counselor shall comply with all federal District of Columbia laws governing the practice of alcoholism and drug abuse counseling.

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- 7304.8 A registered addiction counselor shall not claim either directly or by implication, professional qualifications or affiliations that he or she does not possess.
- 7304.9 A registered addiction counselor shall promote the protection of the public health, safety and welfare and the best interest of the client as a primary guide in determining his or her conduct.
- 7304.10 A registered addiction counselor shall disclose his or her standards of conduct, professional loyalties and responsibilities to all clients.
- 7304.11 A registered addiction counselor shall terminate a counseling relationship when it is reasonably clear that the client is not benefiting from the relationship.
- 7304.12 A registered addiction counselor shall hold the welfare of the client paramount when making any decisions or recommendations concerning referral, treatment procedures or termination of treatment.
- 7304.13 A registered addiction counselor shall not use or encourage a client's participation in any demonstration, research or other non-treatment activities when such participation would have potential harmful consequences for the client or when the client is not fully informed.
- 7304.14 A registered addiction counselor shall provide services in an environment that ensures the privacy and safety of the client at all times and ensure the appropriateness of service delivery.
- 7304.15 A registered addiction counselor shall not disclose confidential information acquired without appropriately executed consent.
- 7304.16 A registered addiction counselor shall provide the client his or her rights regarding confidentiality, in writing, as part of informing the client in any areas likely to affect confidentiality including the recording of the clinical interview or the use of material for training or observation by another party.
- 7304.17 A registered addiction counselor shall do the following:
- (a) Use appropriate provisions for the maintenance of confidentiality and the ultimate disposition of confidential records;
 - (b) Ensure that data obtained, including any form of electronic communication, is secured by the available security methodology; and

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- (c) Limit data to information that is necessary and appropriate to the services being provided and be accessible only to appropriate personnel.
- 7304.18 A registered addiction counselor shall adhere to all federal and District of Columbia laws regarding confidentiality and the counselor's responsibility to report clinical information in specific circumstances to the appropriate authorities.
- 7304.19 A registered addiction counselor shall do the following:
 - (a) Discuss the information obtained from clients only in the appropriated settings for professional purposes that are in the client's best interest; and
 - (b) Present in written and oral reports only germane data for the purposes of evaluation, diagnosis, progress and compliance.
- 7304.20 A registered addiction counselor shall use clinical and other material in teaching or writing only when there is no information used about the parties involved.
- 7304.21 A registered addiction counselor shall inform the client and obtain the client's agreement in areas likely to affect the client's participation including:
 - (a) The recording of an interview;
 - (b) The use of interview material for training purposes; or
 - (c) Observation of an interview with another person.
- 7304.22 A registered addiction counselor shall not engage in professional relationships or commitments that conflict with family members, friends, close associates or others whose welfare might be jeopardized by such a dual relationship.
- 7304.23 A registered addiction counselor shall not exploit relationships with current or former clients for personal gain, including social or business relationships.
- 7304.24 A registered addiction counselor shall not, under any circumstances, engage in sexual behavior with current or former clients.
- 7304.25 A registered addiction counselor shall not accept as clients anyone with whom they have engaged in sexual behavior.

- 7304.26 A registered addiction counselor shall refrain from offering professional services to a client in counseling with another professional except with the knowledge of the other professional or after the termination of the client's relationship with the other professional.
- 7304.27 A registered addiction counselor shall cooperate with duly constituted professional ethics committees or licensing boards and promptly supply necessary information unless constrained by the demands of confidentiality.
- 7304.28 A registered addiction counselor shall not in any way exploit relationships with coworkers, employees, student research participants or volunteers.
- 7304.29 A registered addiction counselor shall inform the client of all financial policies.
- 7304.30 A registered addiction counselor shall consider the ability of a client to meet the financial cost in establishing rates for professional services.
- 7304.31 A registered addiction counselor shall not engage in fee splitting.
- 7304.32 A registered addiction counselor shall not send or receive any commission or rebate or any other form of remuneration for referral of clients for professional services.
- 7304.33 A registered addiction counselor, engaged in the practice of counseling, shall not at any time use his or her relationship with clients for personal gain or for the profit of any agency or any commercial enterprise of any kind.
- 7304.34 A registered addiction counselor shall not accept a private fee for professional work with a person who is entitled to such services through an institution or agency unless the client is informed of such services and still requests private services.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C., 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes approved December 27, 1967 (81 Stat. 744; D. C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1987 hereby gives notice of the intent to adopt a new Chapter 67 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Medicaid Program- Liens and Adjustments or Estate Recovery".

In accordance with federal law, the Medicaid Program must seek financial recovery, not to exceed the total amount expended for Medicaid services, from the estate of any individual who received Medicaid benefits at the age of 55 or older. These proposed rules would: (1) identify those services subject to recovery by the Medicaid program; (2) define the criteria for estate recoveries and circumstances where the District would waive recovery based on undue hardship or where recovery is not cost-effective; and (3) establish the collection process and appeal procedures available to the affected parties.

To ensure compliance with federal law, the Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan) to reflect these changes. The corresponding State Plan amendment was approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 29 DCMR is amended by adding the following new Chapter 67 (Medicaid Program- Liens and Adjustments or Estate Recovery) to read as follows:

**CHAPTER 67 MEDICAID PROGRAM – LIENS AND ADJUSTMENTS
OR ESTATE RECOVERY**

6700 GENERAL PROVISIONS

- 6700.1 The purpose of this Chapter is to identify those services subject to recovery by the Medicaid program after the death of the Medicaid recipient; define the criteria for estate recoveries and circumstances where the District may waive recovery based on undue hardship or where

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recovery is not cost effective; and establish the collection process and appeal procedures of affected parties.

- 6700.2 These rules shall be consistent with the requirements set forth in sections 1902 (a) and 1917 (a), (b) and (c) of the Social Security Act and attendant regulations.

6701 SERVICES SUBJECT TO RECOVERY

- 6701.1 The Medicaid Program may impose a lien on both real and personal property of a Medicaid recipient after the recipient's death subject to the limitations set forth in this Chapter.

- 6701.2 All services and health premiums paid under the District's State Plan for Medical Assistance including nursing facility services, home and community-based services, and related hospital and prescription drug services paid on behalf of any individual who received medical assistance at age 55 or older shall be subject to recovery against the decedent's estate.

6702 LIMITATIONS

- 6702.1 The Department of Health, Medical Assistance Administration (MAA) shall not impose a lien against the decedent's home if any of the following persons is lawfully residing in the home:

- (a) the decedent's surviving spouse;
- (b) the decedent's child who is under the age of 21 or is blind or disabled; or
- (c) a sibling of the decedent who has an equity interest in such home and has been residing in the home for a period of at least one year immediately before the date of the decedent's admission to the medical institution.

- 6702.2 MAA may waive enforcement of any estate recovery claim if it determines that enforcement of the claim would become an undue hardship to an heir, legatee, devisee or other interested person claiming entitlement to receive the assets of the estate.

- 6702.3 MAA may waive enforcement of any estate recovery claim if it determines that recovery is not cost-effective. Recovery shall not be cost-effective when the amount of the claim is less than one hundred dollars (\$100.00).

- 6702.4 The home is the dwelling that the individual considers his or her fixed or permanent residence and to which, whenever absent, the person intends to return. The home may be located within or outside the District of

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Columbia. Only one dwelling unit may be considered an individual's home.

6702.5 The individual's home includes the real property on which the dwelling is located, all tangible personal property located therein, and any related outbuildings located on the property. Outbuildings necessary to the operation of the home include garage, shed and other buildings for the individual's consumption.

6703 UNDUE HARDSHIP

6703.1 Undue hardship shall exist if one of the following criteria has been met:

- (a) The heir, legatee, devisee or other interested person may become eligible for assistance payments without the proceeds from the estate;
- (b) The decedent's home is the sole-income producing asset of a family business and recovery would result in an heir, legatee, devisee or other interested person losing their means of livelihood. The following two conditions shall be met to qualify under this criteria:
 - (1) The family business has been in operation at the property for at least twelve (12) months preceding the death; and
 - (2) Income from the business provides one hundred percent (100%) of a surviving heir, legatee, devisee or other interested person's livelihood;
- (c) If the heir, legatee, devisee or other interested person is allowed to collect the proceeds from the estate, that individual may become ineligible for assistance payments; or
- (d) Recovery would deprive the heir, legatee, devisee or other interested person of shelter and that individual lacks the financial means to obtain and maintain shelter.

6703.2 Undue hardship shall not exist under any of the following circumstances:

- (a) When recovery would merely inconvenience or restrict the lifestyle of the heir, legatee, devisee or other interested person;
- (b) The heir, legatee, devisee or other interested person divest assets to qualify under the undue hardship provision; or
- (c) Recovery will merely prevent the heir, legatee, devisee or other interested person from receiving an anticipated inheritance.

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6703.3 MAA may compromise its claim when collection of the full amount would result in an undue hardship. Consideration may be given to the following factors:

- (a) Contribution by the heir, legatee, devisee or other interested person to the value of the asset or to the support or care of the decedent;
- (b) Any outstanding debt with a higher priority, such as a mortgage, which has been assumed by the heir, legatee, devisee or other interested person; and
- (c) Other compelling circumstances as determined by the District.

6703.4 Any waiver for undue hardship described in section 6703.1 shall only apply to the proportionate share of the decedent's estate that passes to the heir, legatee, devisee or other interested person.

6704 PROCEDURES FOR WAIVING ESTATE RECOVERY

6704.1 The application for Medicaid benefits shall contain language to inform each Medicaid applicant that recoveries against the estate of each Medicaid recipient may be undertaken.

6704.2 MAA shall provide written notice of the proposed recovery to the personal representative or attorney of record prior to asserting any claim or recovery against the estate. The written Notice of Proposed Recovery shall include all of the following information:

- (a) Itemization of the claim of medical services paid by the Medicaid program;
- (b) Legal basis for the claim;
- (c) Exemptions from recovery; and
- (d) Procedures, including time frames, for applying for undue hardship.

6704.3 The personal representative or attorney of record shall request an Undue Hardship Waiver Application (Application) no later than fifteen (15) business days from the date of the Notice of Proposed Recovery.

6704.4 The personal representative or attorney of record shall submit the completed application and supporting documentation to MAA no later than thirty (30) calendar days of receipt of the application.

6704.5 An application that has not been completed in its entirety or fails to contain documentation in support of the request for hardship waiver shall be considered incomplete. MAA shall deny each incomplete application

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and issue a denial notice to the personal representative or attorney of record. The denial notice shall contain all of the following information:

- (a) A statement explaining why the application is incomplete, including a description of the missing information or documentation;
- (b) Appeal rights and procedures for filing an appeal; and
- (c) Notification that the personal representative or attorney has five (5) additional working days from the date of the denial notice to submit the completed application and supporting documentation.

6704.6 MAA shall mail a formal written response to the personal representative or attorney of record within thirty (30) calendar days of receipt of the completed application and supporting documents. If the application is denied, the written response shall include the reasons for the denial and notify the affected persons of the right to appeal, the time frame and procedures for filing an appeal.

6704.7 MAA shall seek recovery of the full amount of the claim if the application is untimely or incomplete as set forth in sections 6704.4 and 6704.5.

6705 APPEALS

6705.1 Decisions made by MAA and communicated in the formal response described in subsections 6704.5 and 6704.6, may be appealed, within thirty (30) days of the date of MAA's letter notifying the personal representative or attorney of record of the decision, to the Office of Administrative Hearings.

6705.2 Filing an appeal shall not stay the District's ability to file a claim against the decedent's estate.

6799 DEFINITIONS

When used in this Chapter, the following terms and phrases shall have the meanings ascribed:

Devisee means a recipient of property, usually real property, by will.

Estate shall include all real and personal property and any interest in such property that is owned by the decedent and that does not pass at the time of decedent's death to another person by the terms of the instrument under which it is held or by operation of law.

Equity Interest in the Home means the value of the individual's home less the unpaid principal balance of any loans or other liens or encumbrance affecting the individual home.

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Heir shall have the same meaning as set forth in D.C. Official Code § 20-101.

Home means any dwelling unit in which an individual has an ownership interest and is used as the individual's principal place of residence. Such dwelling may consist of a house, boat, trailer, mobile home or other habitation.

Interested person shall have the same meaning as set forth in D.C. Official Code § 20-101.

Lawfully Residing means maintaining the domicile legitimately or without violating the law, as evidenced by the receipt of mail at the residence, payment of property taxes, property insurance or utility expenses for the residence.

Legatee shall have the same meaning as set forth in D.C. Official Code § 20-101.

Personal representative shall have the same meaning as set forth in D.C. Official Code § 20-101.

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the same address between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.